

## REMARKS

Applicants have carefully studied the outstanding Official Action. The present response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Applicants express their appreciation to Examiner Jennifer Horwat for the courtesy of an interview, which was granted to Applicants' representative, Sanford T. Colb (Reg. No. 26,856). The interview was held in the USPTO on April 26, 2006. The substance of the interview is set forth in the Interview Summary.

In the interview, 35 U.S.C. 102(b) rejections over Cribbs were discussed. The Interview Summary Record states, "In regard to claim 1, no agreement was reached on patentability as argued by the Applicant on selectively lysing adipose tissue by modulating focused ultrasound... In addition, a related pending application (10/250,955) contains statutory double patenting subject matter which will be addressed in Applicant's response".

Claims 44-98 and 144-198 have been cancelled without prejudice. Applicant respectfully submits that accordingly, co-pending application 10/250,955 no longer contains statutory double patenting subject matter.

Claim 1-5, 8-9, 101, 103-105 and 108-109 have been amended to correct typographical errors.

Claim 124 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Accordingly, claim 124 has been amended.

Claims 99-100 and 199-200 stand rejected under 35 U.S.C. 112, second paragraph, as failing to have sufficient antecedent basis. Claims 99 and 199 have been amended to provide the required antecedent basis.

Claims 1-11, 16-17, 44-54, 101-111, 116-117 and 144-154 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cribbs (U.S. Patent No. 6,071,239).

Claims 12-15, 18-24, 30-37, 43, 55-65, 71-78, 84, 112-115, 118-124, 130-137, 143, 155-165, 171-178 and 184 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cribbs in view of Friedman et al (6,645,162). Claims 25-27, 38-40, 66-68, 70, 79-81, 83, 125-127, 138-140, 166-168, 170, 179-181 and 183, stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cribbs in view of Dory et al (U.S. Patent No. 5,111,822). Claims 28-29, 41-42, 69, 82, 128-129, 141-142, 169 and 182 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cribbs in view of Friedman et al in further view of Dory et al. Claims 85-100 and 185-200 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Friedman et al in view of Fry et al (U.S. Patent No. 4,951,653).

With reference to Cribbs, the Examiner states: "The HIFU is concentrated to kill cells lying in the focal zone so that it does not significantly damage cells outside the focal zone..."

The abstract of Cribbs reads: "Fat cells in a living patient are non-invasively destroyed without separating the skin from the body by applying to the fat layer high intensity focused ultrasound simultaneously in a multiplicity of discrete focal zones produced by a single transducer array." Thus, Cribbs applies ultrasonic energy in a geometrically selective fashion, selectively choosing focal zones. However, Cribbs does not show or suggest applying ultrasonic energy selectively to various tissues within a geometric focal zone.

In contrast, claim 1 of the present application recites "modulating said focused ultrasonic energy so as to selectively lyse said adipose tissue in said target volume and generally not lyse non-adipose tissue in said target volume". Thus, claim 1 recites selective lysis of cells based on the tissue type, and not only on the zone in which the tissue cells lie. Independent claims 99, 101 and 199 include similar recitations to claim

1.

Thus, Cribbs does not show or suggest selectively lysing the adipose tissue and generally not lysing non adipose tissue as recited in independent claims 1, 99, 101 and 199. However, independent claims 1, 99, 101 and 199 have been amended to further clarify the novelty of the present invention over Cribbs, by reciting selectively lysing at least most of the adipose tissue and generally not lysing non-adipose tissue.

Friedman et al describes: "Cells are destroyed within a subcutaneous tissue region using a transducer disposed externally adjacent to a patient's skin. The transducer emits acoustic energy that is focused at a linear focal zone within the tissue region, the acoustic energy having sufficient intensity to rupture cells within the focal zone while minimizing heating..." (Abstract).

Dory et al describes: "A process and device of location and destruction of an anatomic target includes the periodic emission of a focused treatment beam of elastic waves and an echographic image of the target formed in real time during the treatment period by means of an ultrasonic auxiliary beam carrying out a scanning substantially centered in a symmetry plane of the focused treatment beam" (Abstract).

Fry et al describes: "An ultrasound brain lesioning system with ultrasound, CT or MRI site localization includes a skull fixation apparatus, a position data translating fixture and a computer-controlled ultrasound transducer... The transducer is cooperatively arranged with the translating system such that the benchmarks of the skull fixation apparatus are utilized to derive X, Y and Z linear coordinates and two rotary coordinates which are at right angles to one another which are also input into the computer such that the computer is then capable of automatically driving the transducer and positioning it at the appropriate location for producing volume lesions in the brain at the site of the identified brain tumors or other selected tissues" (Abstract)

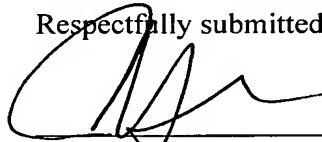
Thus, none of the prior art of record shows or suggests selectively lysing at least most of the adipose tissue and generally not lysing non-adipose tissue as recited in

amended independent claims 1, 99, 101 and 199.

Accordingly, independent claims 1, 99, 101 and 199 are deemed patentable over the prior art of record and favorable reconsideration is respectfully requested. Claims 21-43, 100, 102-143 and 200 depend directly or ultimately from the above mentioned independent claims and recite additional patentable subject matter and therefore are deemed patentable.

In view of the foregoing remarks and amendments, all of the claims are deemed to be allowable. Favorable reconsideration and allowance of the application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Julian H. Cohen', is written over a horizontal line.

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